House No. 4541

Message from His Excellency the Governor recommending legislation relative to An Act Reorganizing Certain Agencies of the Executive Department.

The Commonwealth of Massachusetts



EXECUTIVE DEPARTMENT
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DEVAL L. PATRICK GOVERNOR TIMOTHY P. MURRAY LIEUTENANT GOVERNOR

3/2/2010

To the Honorable Senate and House of Representatives:

As provided in Article LXXXVII of the Amendments to the Constitution, I submit for your consideration, "An Act Reorganizing Certain Agencies of the Executive Department" (Reorganization Plan 2010-2). This plan resubmits several of the proposals made in my Reorganization Plan 2010-1, and I ask that you consider this plan instead of that earlier one.

This legislation restructures certain state agencies to make them more cost effective and responsive to needs of the Commonwealth by consolidating services and program staff. By reorganizing certain state agencies, this legislation ensures the most coordinated, efficient operation of important state services.

Specifically, this legislative proposal combines the State Office of Minority and Women Business Assistance (SOMWBA) and the Affirmative Market Program within the Operational Services Division (OSD) to create a single door through which minority and women-owned firms can seek certification, technical assistance and capacity-building services. The newly created department within OSD will be named the Supplier Diversity Office.

Further, this proposal transfers the Office of Geographic and Environmental Information (MassGIS) from the Executive Office of Energy and Environmental Affairs to the Information Technology Division within the Executive Office for Administration and Finance. By moving MassGIS closer to the center of state government, with a department focused primarily on information technology infrastructure, the Commonwealth can achieve economies of scale and efficiencies by eliminating duplicative state purchasing of these services.

Finally, the bill proposes to formalize the recognition that the Fiscal Affairs Division is now a fully integrated component of the Executive Office for Administration and Finance.

In view of public comments that we and the Legislature have received, we are deferring our proposals to restructure the Civil Service Commission and to move the Bureau of Special Education Appeals into the Division of Administrative Law Appeals. We will continue to discuss these proposals with interested legislators and members of the public, and we will consider proposing new versions of them in the near future.

Together, the proposals in this reorganization plan improve upon our state agency organization and the delivery of citizen services while maximizing efficiencies and cost effectiveness. I urge your prompt and favorable consideration.

Sincerely,

DEVAL L. PATRICK,

Governor.

The Commonwealth of Alassachusetts

In the Year Two Thousand and Nine

An Act Reorganizing Certain Agencies of the Executive Department.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

- 1 SECTION 1. Section 16G of chapter 6A of the General Laws, as appearing in the 2008 Official Edition,
- 2 is hereby amended by striking out, in clause (b), the words "the trade office and the office of minority and
- 3 women business assistance", and inserting in place thereof the following words:-
- 4 and the trade office.

- 5 SECTION 2. Chapter 7 of the General Laws is hereby amended by adding the following sections:-
- 6 Section 57. It is the policy of the commonwealth to promote and facilitate the fullest possible
- 7 participation by all citizens in the affairs of the commonwealth. Minority, women and veterans business
- 8 enterprises frequently face special handicaps and problems in achieving viable economic status. Various
- 9 public and private programs have been initiated to assist minority, women and veterans business
- 10 enterprises, where applicable, to achieve economic viability, though many businesses have not been
- 11 adequately informed of these programs because of inadequate coordination and communication efforts,
- with the result that many services available are never adequately delivered to those who need them. The
- 13 state government, as the biggest business in the commonwealth of Massachusetts, has a special
 - responsibility to see that all available services and programs are put to the best use. These steps are

- 15 necessary to guarantee the fullest participation by all citizens of the commonwealth in the economy of the
- state and to guarantee the fullest benefits to citizens of programs and services available for assistance.
- 17 Section 58. As used in sections 59 to 61 of this chapter, the following words shall have the following
- meanings, unless a contrary intent is clearly indicated:-
- "Certified business enterprise" and "certified business", a business certified pursuant to section 61.
- 20 "Director", the director of the supplier diversity office.
- 21 "Minority business enterprise" or "MBE", for the purpose of receipt of services from SDO, means a
- business enterprise that is owned and controlled by one or more socially or economically disadvantaged
- 23 persons. Such disadvantage may arise from cultural, racial, chronic economic circumstances or
- background or other similar cause. Such persons include, but are not limited to, African Americans, Cape
- 25 Verdeans, Western Hemisphere Hispanics, Asians, American Indians, Eskimos, and Aleuts. For purposes
- of section 61 and of section 40N of chapter 7, the term "minority owned business" shall have the same
- 27 meaning as "minority business enterprise".
- 28 "Office", the supplier diversity office as established by section 61.
- 29 "SDO", the supplier diversity office as designated by section 61. The office shall be the successor to the
- office of minority and women business assistance.
- 31 "Secretary", the secretary of the executive office for administration and finance.
- 32 "State purchasing agent", the head of the operational services division of the executive office for
- administration and finance.
- 34 "Veteran business enterprise" or "VBE", a business enterprise that is both owned and controlled by 1 or
- 35 more veterans, as defined in section 7 of chapter 4, who has invested in an ongoing business free of
- 36 conversion rights.
- 37 "Women business enterprise" or "WBE", for the purpose of receipt of services from SDO means a
- business enterprise that is both owned and controlled, by one or more women who have invested in an

39 ongoing business free of conversion rights. For purposes of section 61 and of section 40N of chapter 7,

40 the term "women owned business" shall have the same meaning as "women business enterprise."

41 Section 58. There shall be a supplier diversity office which shall be an office within the operational

services division of the executive office for administration and finance.

43 Section 59. SDO shall have a director and such other specialists as may be authorized. The director shall

have all necessary authority, subject to the direction, control and supervision of the state purchasing

agent, to utilize existing staff within the operational services division to effect the purposes of sections 57

to 61, inclusive, and shall have the authority to seek such funds, public or private, as may be available and

needed to carry out the intent of those sections.

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Section 61. (a) SDO shall adopt regulations and policies for the establishment and management of the

office's certification process, including regulations and policies governing the streamlining, approval,

denial or revocation of any such certification.

(b) SDO shall seek to develop and maintain a directory of certified minority, women and veteran businesses within the commonwealth, and shall, from time to time, notify such businesses of the programs and services available to them, whether from public or private sources, or from local, state or federal agencies.

(c) SDO may, subject to approval by the state purchasing agent, establish its own programs and policies and seek from any official or agency of the commonwealth or its political subdivisions, information and assistance necessary to carry out its functions and duties; and all officials, agencies or political subdivisions of the commonwealth shall supply such information or assistance.

(d) SDO shall receive assistance from state agencies including, where consistent with existing law, commitments that such agencies do a limited amount of contracting and subcontracting with minority or women or veteran businesses. SDO shall assist minority, and women and veteran businesses in making use of any special programs which may be operated by the state or by various departments and agencies of the federal government.

(e) SDO, through the state purchasing agent, shall coordinate its activities with those of other offices, and shall assist minority and women and veteran businesses in their dealings with federal agencies and with state departments and agencies. SDO shall also provide assistance to all cabinet secretaries and departments, in evaluating economic activities of their offices to determine how their offices may be of assistance in providing fair opportunities for minority and women businesses.

- (f) SDO may work with banks, insurance companies, and other private businesses in the commonwealth to encourage the formation of seed money for facilitating the starting-up and expansion of minority and women businesses. SDO may provide assistance to minority and women businesses in their efforts to obtain loan money and operating capital from private and public lenders.
- (g) SDO may seek to increase the amount of financial assistance available to minority and women businesses from private financial institutions; and may, from time to time, sponsor conferences, workshops or other informational programs.
- (h) SDO shall seek to encourage voluntary assistance programs by which nonminority and nonwomen business employees are loaned to minority and women businesses or by which minority and women business persons are taken into viable business ventures to acquire training and experience in managing business affairs.
- (i) SDO may encourage state contract awarding authorities to seek to increase the incidence of joint ventures between nonminority state contractors and minority and women and veteran contractors, by specifically pointing out that such arrangements would constitute one method of partially meeting affirmative action requirements imposed upon both nonminority state contractors and the state. The director of affirmative action shall be kept informed of actions taken under this provision. SDO shall follow advertisements for construction work by public bodies in the commonwealth, shall notify minority and women and veteran general contractors and subcontractors of the bid opening dates for the approximate amount of the contract and subcontract work being bid, may assist them in securing bonds and in bidding for that construction work and shall initiate a program to help qualified minority persons and women to get started as small business firms in the construction field by helping to arrange joint

ventures with qualified general contractors and subcontractors and by arranging for administrative and accounting assistance to help them carry out their subcontract and general contract obligations during the period of contract performance.

- (j) SDO shall, through the state purchasing agent, submit an annual report to the general court on the minority and women businesses which it assists, the type of services which it renders, the difficulties it encounters. The report may include recommendations for legislative or executive action.
- (k) SDO shall, after notice and an opportunity to be heard, impose administrative penalties on an applicant for certification or recertification that knowingly provides false or misleading information on its application or in support of its application for certification or recertification as a minority- or women-or veteran-owned business, or on a person who fails to comply with any provision of any regulation or approval issued or adopted by the agency or of any law which the agency has the authority or responsibility to enforce.
- (l) The director shall consult with the commissioner of capital asset management and maintenance on the establishment of an affirmative marketing program pursuant to section 40N of chapter 7. The affirmative marketing program shall be established for the purpose of ensuring the fair participation of minority-owned and women-owned businesses on capital facility projects and state assisted building projects. The affirmative marketing program shall establish participation goals for minority-owned and women-owned business on capital facility projects and state assisted building projects. Participation goals for minority-owned business and women-owned business shall be based upon the broadest and most inclusive pool of available minority-owned businesses and women-owned businesses interested in and capable of performing construction work and design services on such capital facility projects and state assisted building projects. The director and the commissioner of capital asset management and maintenance shall meet on a quarterly basis to determine the status of implementation of the affirmative marketing program and what further steps both agencies deem necessary to achieve the purposes of section 40N of chapter 7 and this subsection. For purposes of this subsection, the terms

"capital facility project" and "state assisted building project" shall have the same meanings as found in section 40N of chapter 7.

- (m) In connection with the affirmative marketing program established pursuant to section 40N of chapter 7, SDO shall regularly review and, where necessary, modify its certification process to ensure that it operates effectively, and shall report annually to the secretary of the executive office for administration and finance regarding these matters.
- (n) SDO shall be responsible for the overall management, monitoring, and enforcement of the affirmative marketing program as it relates to minority owned businesses and women owned businesses participation on state assisted building projects. The director may appoint a program director to assist in program development, coordination of program operations and compliance with program goals and objectives. The program director shall also have responsibility for monitoring compliance regarding minority owned businesses and women owned businesses participation on state assisted building projects, addressing program violations and coordinating enforcement activities.
- (o) The director shall develop a written procedure by which participation goals, for an individual state assisted building project, may be adjusted for minority-owned businesses, women-owned businesses or both; but, the adjustment shall be based upon the actual availability of minority-owned businesses and women-owned businesses, the geographic location of the project, the scope of work of the capital facility project or other relevant factors.
- (p) The director shall develop a written waiver procedure by which, at any time before the award of a contract, it may be determined that compliance with the participation goals is not feasible and by which the participation goals on a state assisted building project may be reduced or waived. Waiver shall be granted only upon a showing that good faith efforts have been made to comply with the participation goals.
- (q) The director and the commissioner of capital asset management and maintenance shall by March 15 of each year submit to the joint committee on state administration and regulatory oversight, the senate committee on ways and means, the house committee on ways and means, the clerk of the house,

and the clerk of the senate a report on the performance of the affirmative marketing program for the preceding year. The report shall, at a minimum, show the name and address of each such minority owned business and women owned business, its designation as a minority-owned or women-owned business, the contract or subcontract price, a description of the work performed on the contract by class of work, and project type, and shall show separately the total number of contracts awarded to minority-owned and women-owned businesses as a percentage of the total number of contracts awarded and as a percentage of the total contract price.

(r) The director shall adopt regulations necessary to implement this subsection.

SECTION 3. Section 1 of chapter 23A of the General Laws, as so appearing, is hereby amended by striking out, in clause (b), the words "and the office of minority and women business assistance and all entities within that office."

SECTION 4. Sections 39 to 44, inclusive, of chapter 23A of the General Laws are hereby repealed.

SECTION 5. Notwithstanding any general or special law to the contrary, the phrase "office of minority and women business assistance", wherever it appears in a general or special law, shall mean the supplier diversity office.

SECTION 6. (a) Notwithstanding any general or special law to the contrary, this section shall facilitate the orderly transfer of employees, proceedings, rules and regulations, property and legal obligations of the following functions of state government from the state office of minority and women business assistance as the transferor agency, to the operational services division as the transferee agency;

(b) To the extent that employees of the transferor agency, including those who were appointed immediately before the effective date of this act and who hold permanent appointment in positions classified under chapter 31 of the General Laws or have tenure in their positions as provided by section 9A of chapter 30 of the General Laws or do not hold such tenure, or hold confidential positions, are transferred to the respective transferee agency, such transfers shall be effected without interruption of

service within the meaning of said section 9A of said chapter 31, without impairment of seniority, retirement or other rights of the employee, and without reduction in compensation or salary grade, notwithstanding any change in title or duties resulting from such reorganization, and without loss of accrued rights to holidays, sick leave, vacation and benefits, and without change in union representation or certified collective bargaining unit as certified by the state division of labor relations or in local union representation or affiliation. Any collective bargaining agreement in effect immediately before the transfer date shall continue in effect and the terms and conditions of employment therein shall continue as if the employees had not been so transferred. The reorganization shall not impair the civil service status of any such reassigned employee who immediately before the effective date of this act either holds a permanent appointment in a position classified under chapter 31 of the General Laws or has tenure in a position by reason of section 9A of chapter 30 of the General Laws. Notwithstanding any other general or special law to the contrary, all such employees shall continue to retain their right to collectively bargain pursuant to chapter 150E of the General Laws and shall be considered employees for the purposes of said chapter 150E. Nothing in this section shall be construed to confer upon any employee any right not held immediately before the date of said transfer, or to prohibit any reduction of salary grade, transfer, reassignment, suspension, discharge, layoff, or abolition of position not prohibited before such date.

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- (c) All petitions, requests, investigations and other proceedings appropriately and duly brought before the transferor agency or duly begun by the transferor agency and pending before it before the effective date of this act, shall continue unabated and remain in force, but shall be assumed and completed by the transferee agency.
- (d) All orders, rules and regulations duly made and all approvals duly granted by the transferor agency, which are in force immediately before the effective date of this act, shall continue in force and shall thereafter be enforced, until superseded, revised, rescinded or canceled, in accordance with law, by the transferee agency.

(e) All books, papers, records, documents, equipment, buildings, facilities, cash and other property, both personal and real, including all such property held in trust, which immediately before the effective date of this act are in the custody of the transferor agency shall be transferred to the transferee agency.

(f) All duly existing contracts, leases and obligations of the transferor agency shall continue in effect but shall be assumed by the transferee agency. No existing right or remedy of any character shall be lost, impaired or affected by this act.

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SECTION 7. Section 4 of chapter 7 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by adding the following paragraph:-

The secretary shall appoint a budget director. She shall be a person of ability and experience and shall devote her entire time to the duties of her office. The budget director may establish, with the approval of the secretary, administrative units that she deems appropriate. The budget director shall prepare and maintain financial plans and, under the general direction of and on behalf of the governor, shall prepare operating budget recommendations for all departments, offices, commissions and institutions which receive periodic appropriations from the commonwealth. These plans and recommendations shall be prepared according to the requirements of chapter 29. Subject to the approval of the secretary, the budget director shall design and install, and may revise from time to time, a financial planning and budgeting system, including the requisite forms, procedures, information, computer software and such other attributes as she considers necessary.

SECTION 8. Section 4A of said chapter 7, as so appearing, is hereby amended by striking out clause (c).

SECTION 9. Section 4D of said chapter 7, as so appearing, is hereby amended by striking out, in line 11, the word "three" and inserting in place thereof the following numeral:- 4.

TRANSFER OF "CORE" FUNCTIONS OF MASSGIS FROM EOEEA TO ITD

SECTION 10. Clause (d) of section 4A of chapter 7 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting after the first paragraph the following paragraph:-

The division shall include an office of geographic information through which the chief information officer shall develop, maintain, update and distribute geographic information, technology, data and services for use by state agencies, municipalities and the public. The office shall coordinate all geographic information activities in state and local government, and shall collect, manage and distribute geographic information maintained by state agencies and local government agencies. It shall also provide technical services related to geographic information to state agencies and municipalities. The chief information officer shall set standards for the acquisition, management, and reporting of geographical information, and the acquisition, creation or use of applications employing such information, by any executive department agency, and the reporting of such information by municipalities.

SECTION 11. Section 4B of chapter 21A of the General Laws is hereby repealed.

SECTION 12. (a) Notwithstanding any general or special law to the contrary, this section shall facilitate the orderly transfer of employees, proceedings, rules and regulations, property and legal obligations of the following functions of state government from the office of geographic and environmental information, as the transferor agency, to the information technology division, as the transferee agency; but the employees, proceedings, rules and regulations, property and legal obligations and functions of the transferor agency that are engaged in developing and maintaining data and applications specific to the executive office for energy and environmental affairs and its agencies shall not be subject to this transfer.

(b) To the extent that employees of the transferor agency, including those who were appointed immediately before the effective date of this act and who hold permanent appointment in positions classified under chapter 31 of the General Laws or have tenure in their positions as provided by section 9A of chapter 30 of the General Laws or do not hold such tenure, or hold confidential positions, are

transferred to the respective transferee agency, such transfers shall be effected without interruption of service within the meaning of said section 9A of said chapter 31, without impairment of seniority, retirement or other rights of the employee, and without reduction in compensation or salary grade, notwithstanding any change in title or duties resulting from such reorganization, and without loss of accrued rights to holidays, sick leave, vacation and benefits, and without change in union representation or certified collective bargaining unit as certified by the state division of labor relations or in local union representation or affiliation. Any collective bargaining agreement in effect immediately before the transfer date shall continue in effect and the terms and conditions of employment therein shall continue as if the employees had not been so transferred. The reorganization shall not impair the civil service status of any such reassigned employee who immediately before the effective date of this act either holds a permanent appointment in a position classified under chapter 31 of the General Laws or has tenure in a position by reason of section 9A of chapter 30 of the General Laws. Notwithstanding any other general or special law to the contrary, all such employees shall continue to retain their right to collectively bargain pursuant to chapter 150E of the General Laws and shall be considered employees for the purposes of said chapter 150E. Nothing in this section shall be construed to confer upon any employee any right not held immediately before the date of said transfer, or to prohibit any reduction of salary grade, transfer, reassignment, suspension, discharge, layoff, or abolition of position not prohibited before such date.

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- (c) All petitions, requests, investigations and other proceedings appropriately and duly brought before the transferor agency or duly begun by the transferor agency and pending before it before the effective date of this act, shall continue unabated and remain in force, but shall be assumed and completed by the transferee agency.
- (d) All orders, rules and regulations duly made and all approvals duly granted by the transferor agency, which are in force immediately before the effective date of this act, shall continue in force and shall thereafter be enforced, until superseded, revised, rescinded or canceled, in accordance with law, by the transferee agency.

- 261 (e) All books, papers, records, documents, equipment, buildings, facilities, cash and other property, both 262 personal and real, including all such property held in trust, which immediately before the effective date of 263 this act are in the custody of the transferor agency shall be transferred to the transferee agency.
- 264 (f) All duly existing contracts, leases and obligations of the transferor agency shall continue in effect but 265 shall be assumed by the transferee agency. No existing right or remedy of any character shall be lost, 266 impaired or affected by this act.
- SECTION 13. Sections 10, 11 and 12 shall take effect on July 1, 2010.
- SECTION 14. Sections 1 to 9, inclusive, of this act shall take effect as soon as it has the force of law under subsection (c) of section 2 of Article LXXXVII of the Amendments to the Constitution.